TABLE OF CONTENTS OF BRIEF.

	Page
QUESTION PRESENTED	1
OPINIONS BELOW	1
STATUTES INVOLVED	2
STATEMENT	2
The Proceedings	2
Respondent's Services	5
SEC and District Court Decisions	12
REASONS WHY THE WRIT SHOULD BE DENIED	15
I. A Determination of the Fanciful Issue Posed by the Petitioner Would Not Affect the Outcome of the Case at Bar	15
II. The Decision Below Was Clearly Correct	28
A. The Judgment Below Places No Improper Burdens on the Commission's Fee Jurisdiction	28
B. The Decision Affirmed Below Properly Applied the Substantial Evidence Rule	40

TABLE OF CASES CITED.

	Page
American Power & Light Co. v. SEC, 329 U. S. 90	38, 39
In re Consolidated Motor Parts, Inc., 85 F. 2d 579	30
In re Detroit International Bridge Co., 111 F. 2d 235 (C. A. 6)	30
In re Albert Dickinson Co., 104 F. 2d 771	30
In re Electric Bond and Share Company, 95 F. Supp. 492	43
Engineers Public Service Co., H. C. A. R. No. 7041	31
Matter of Engineers Public Service Company, Civil Action No. 995	38
Holding Company Act Release No. 6144	4
In re Illinois Power Co., 74 F. Supp. 317	5
In the Matter of Illinois Power Co., 84 F. Supp. 342 (D. Del., 1949)	5
Labor Board v. American Ins. Co., 343 U. S. 395	42
Labor Board v. Pittsburgh Steamship Co., 340 U. S. 498	41
Milbank, Tweed & Hope v. McCue, 111 F. 2d 100 (C. A. 4)	30
In re Mountain States Power Co., 118 F. 2d 405	30
Newman & Bisco v. Realty Associates Securities Corp., 173 F. 2d 609	30
North American Co. and Its Subsidiary Companies, H. C. A. R. No. 7375	5, 10
The North American Company and Its Subsidiary Companies, H. C. A. R. No. 7514	11
North American Light & Power Co., 10 SEC 924	3
North American Light & Power Co., 12 SEC 709	3

TABLE OF CASES CITED (Continued).

	Page
North American Light & Power Company Holding Company System, 14 SEC 576 (1943)	3, 10
In re North Amer. Light and Power Co., 101 F. Supp. 931; 106 F. Supp. 686	1
North American Light and Power Co. v. SEC. (unreported) C. A. 3, No. 8388, Oct. 14, 1943	4
In re North American Light & Power Co., 170 F. 2d 924 (C. A. 3, 1948)	5
Appeal of North American Light and Power Co., 180 F. 2d 975 (C. A. 3, 1950)	5
In re North Amer. Light and Power Co.; Securities & Exchange Commission v. Masterson, 202 F. 2d 638	1
In re Northern States Power Company (unreported), D. Minn., Civil Action No. 2673, Jan. 12, 1953	23, 24, 25, 26
In re Prudence Bonds Corp., 122 F. 2d 258 (C. A. 2)	30
Public Service Corporation of New Jersey and Its Subsidiary Companies, H. C. A. R. No. 12000 (June 16, 1953)	22
SEC v. Chenery Corporation, 318 U. S. 80	38
SEC v. Cogan, 201 F. 2d 78 (C. A. 9, 1952)	23, 37
Silver v. Rosenberg, 139 F. 2d 1020 (C. A. 2)	30
Smith v. Central Trust Co., 139 F 2d 733 (C. A. 4)	30
Steere v. Baldwin Locomotive Works, 98 F. 2d 889 (C. A. 3)	30
Universal Camera Co. v. Labor Board, 340 U. S. 474	36, 40, 41

TABLE OF STATUTES AND AUTHORITIES CITED.

	Page
Administrative Procedure Act, Section 10(e) (60 Stat. 327, 5 U. S. C. 1001)	1, 2
Bankruptcy Act, Sections 242 and 243 of Chapter X, 11 U. S. C. §§ 642 and 643	30, 32, 36
Commercial and Financial Chronicle of June 11, 1953 (page 56, col. 1)	35
Cong. Rec., Feb. 25, 1952, pp. 1318-19	34
Congressional Record of July 25, 1952	36
Final Report of the Securities and Exchange Commission Subcommittee to the Committee on Interstate & Foreign Commerce, House of Representatives, 82 Cong. (1952) pp. 117-125	35
Investment Company Act of 1940, Release No. 1862	28
Public Utility Holding Company Act of 1935 (49 Stat. 803, 15 U. S. C. 79a, et seq.):	
Section 11	27
Section 11(b)	39
Section 11(b)(2)	2, 3
Section 11(e)	1, 2, 3, 20, 21, 22, 28, 30, 31, 32, 37, 38, 39, 42
Section 11(f)	31
Section 24(a)	4
2 SEC Jud. Dec. 1331	4
59 Yale Law Journal 1365	43

IN THE

Supreme Court of the United States.

No. 111.

OCTOBER TERM, 1953.

SECURITIES AND EXCHANGE COMMISSION,
Petitioner,

v.

JAMES F. MASTERSON,
Respondent.

BRIEF ON BEHALF OF JAMES F. MASTERSON IN OPPOSITION.

QUESTION PRESENTED.

Whether the District Court in performing its functions as a statutory Enforcement Court under Section 11(e) of the Holding Company Act and as a Review court under Section 10(e) of the Administrative Procedure Act, may approve the payment of a fee to counsel for one of the principal parties, which the Court found, upon review of the record evidence, had been unjustly and unreasonably denied by the Securities and Exchange Commission, and such finding was affirmed by the Court of Appeals, "upon consideration of the record", as a permissible exercise of the Enforcement Court's judgment in the performance of its reviewing function.

OPINIONS BELOW.

In re North Amer. Light and Power Co., 101 F. Supp. 931 (R. 72a-83a); 106 F. Supp. 686 (R. 83a-85a); *In re North Amer. Light and Power Co.; Securities & Exchange Commission v. Masterson*, 202 F. 2d 638 (R. 232a-233a).

STATUTES INVOLVED.

Section 11(e) of the Public Utility Holding Company Act of 1935 (49 Stat. 803, 15 U. S. C. 79a, et seq.); and

Section 10(e) of the Administrative Procedure Act (60 Stat. 327, 5 U. S. C. 1001).

STATEMENT.

This Court is requested to grant the Writ of Certiorari upon a question which is essentially factual, viz: Did the Securities and Exchange Commission, on the facts of record in the case, unreasonably withhold from respondent a portion of the fee claimed by him in the present proceeding? The Enforcement Court held that upon the facts of the case it did. Upon those facts the Court Below affirmed.

An understanding of the case presented by the petition requires a more adequate statement of the facts than that contained in the petition.

The Proceedings.

Respondent Masterson was retained by North American Light & Power Company ("Light and Power") in 1943 to render legal services in connection with the complex and difficult proceedings in which the Company was then involved and which continued actively over the next five years, under the circumstances described below.

Light and Power, a Delaware Corporation having a capitalization of approximately $50,000,000, was registered under the Public Utility Holding Company Act as a holding company in the system of The North American Company. In 1941 Light and Power took steps to effect a voluntary dissolution under the provisions of the Delaware Corporation Law, but the SEC applied to Judge Leahy of the United States District Court for the District of Delaware for an injunction preventing the Company from dissolving except pursuant to proceedings under the Holding Company Act. While the injunction proceedings before the District Court were still pending, Light and Power consented to the entry by the SEC of an order under Section 11

(b) (2) of the Holding Company Act specifying that North American and Light and Power "shall proceed with due diligence to bring about a liquidation of Light and Power in accordance with a plan that is fair and equitable to the security holders affected thereby.[1] In pursuance of this agreement, Light and Power on October 15, 1942 filed with the SEC under Section 11(e) of the Holding Company Act, a plan providing for its liquidation and dissolution. Shortly thereafter, Illinois-Iowa Power Company (later Illinois Power) a former subsidiary of Light and Power, filed with the SEC claims against Light and Power amounting to some $26,500,000, based upon alleged past acts of mismanagement. Light and Power moved to dismiss these claims on the ground that the SEC lacked jurisdiction to adjudicate them. The SEC denied the motion (Commissioner Healy dissenting) and ordered the presentation of evidence.[2]

Light and Power thereupon proceeded in the hearings before the SEC to assert legal and equitable defenses against the claims of Illinois Power, and to adduce evidence in refutation of the Illinois claims as well as in support of its affirmative defenses. An attorney for a group of preferred stockholders of Light and Power (Lawrence Condon) sought to intervene in the proceedings to compel Light and Power to file a "claim-over" against North American Company. Light and Power opposed the interjection of the "claim-over" against North American as an untimely and prejudicial complication, and contended that the Illinois Power claims "should be resolved first, 'unencumbered by any other issues at that time'" (R. 51a, 98a-100a). The SEC, although denying Condon's petition, subsequently (September 8, 1943) granted his group leave to file a statement of "claim-over" against North American and to adduce evidence with respect to it.[3] Light and Power filed a

1. See *North American Light & Power Co.*, 10 SEC 924, 930-2.

2. *North American Light & Power Co.*, 12 SEC 709.

3. See *North American Light & Power Company Holding Company System*, 14 SEC 576 (1943).

petition for review under Section 24(a) of the Holding Company Act in the Court of Appeals (Third Circuit) urging that it was prejudiced by the untimely interjection of the claim-over controversy, but the Court denied the petition on the ground that the SEC's order was interlocutory and hence not reviewable at that stage.[4]

Before the SEC, hearings on the Illinois Power claims against Light and Power proceeded intensively until the latter part of 1943, and were the subject of briefs and oral arguments before the Commission on July 27, 1944. Hearings on the claim-over against North American commenced toward the end of 1943 and continued, with interim adjournments, until the closing of the record in 1946. As had been feared by Light and Power, the "claim-over" hearings produced further complications in respect of the Illinois Power claims against Light and Power, and led to a reopening of that phase of the controversy. In the Fall of 1945, Illinois Power was granted leave by the SEC to amend its statement of claim to include an additional claim against Light and Power, and also a claim directly against North American; and the Condon group was also permitted to file additional claims against North American.[5]

Since it was necessary "to hold further protracted hearings on the above mentioned additional claims" (R. 25a) the record was not finally closed until April 22, 1946, at which time it comprised some 13,000 pages of testimony and 5000 exhibits.[6] Thereupon, briefs and requested findings were prepared and filed on behalf of all parties, and oral argument was scheduled to be held before the Commission in December 1946, on the merits of the complex controversy. Shortly before that date, the three companies involved (Illinois Power, Light and Power and North American) announced that they had reached a settlement of the claims affecting Illinois Power, and that Light and

4. *North American Light and Power Co. v. SEC.* (unreported) C. A. 3, No. 8388, Oct. 14, 1943. See 2 SEC Jud. Dec. 1331.

5. Holding Company Act Release No. 6144; cf. R. 24a.

6. R. 25a.

Power and North American had agreed upon a revised dissolution plan for Light & Power. The settlement as to Illinois Power was subsequently embodied in plans and applications filed with the SEC, and approved by it on April 30, 1947.[7] Thereafter, enforcement proceedings were held before Judge Leahy, and on May 28, 1947 he entered his decree approving and enforcing the settlement plan with respect to the claims of Illinois Power. On July 25, 1947 the SEC issued its findings and opinions with respect to the proposed settlement of claims between Light and Power and North American and the plan of dissolution of the former, and required certain amendments therein. These amendments were duly filed, and the SEC approved the amended program. Enforcement proceedings were again held before Judge Leahy, and on November 6, 1947 he approved and enforced this further plan over the objections of certain stockholders of Light and Power (the Dana group) who had come into the proceedings as they approached their conclusion.[8] The Court of Appeals affirmed the District Court on November 5, 1948.[9] Certain collateral questions with respect to the right of the objecting stockholders to receive an interim dividend distribution were thereafter decided by Judge Leahy,[10] and on appeal his determination was affirmed.[11]

Respondent's Services.

Respondent, James F. Masterson, a Philadelphia attorney, was retained by Light and Power in the early part of June 1943, to serve as one of its attorneys in connection with the congeries of proceedings before the SEC and the courts outlined above (R. 197a, 205a). The date of Mas-

7. *North American Company, Holding Company Act* Release No. 7375.

8. *In re Illinois Power Co.*, 74 F. Supp. 317.

9. *In re North American Light & Power Co.*, 170 F. 2d 924 (C. A. 3, 1948).

10. *In the Matter of Illinois Power Co.*, 84 F. Supp. 342 (D. Del., 1949).

11. *Appeal of North American Light and Power Co.*, 180 F. 2d 975 (C. A. 3, 1950).

terson's entrance into the case was approximately three months prior to the date that the Commission granted leave to Condon to file the "claim-over" on behalf of Light & Power against North American.

The record discloses the following facts with respect to the Masterson employment. The offices of Light & Power were situated in Chicago. Prior to Masterson's being retained by Light & Power, the company had been principally represented in the various proceedings before the SEC and the Courts by Clayton E. Kline, member of a law firm of Topeka, Kansas, who had been retained to serve as general counsel to Light & Power in March 1942 (R. 51a). As the proceedings with respect to Light & Power's program of dissolution took on steadily mounting complexity, and as the SEC opened the door ever wider to an unprecedented labyrinth of claims, counterclaims and claim-overs to a point that elicited dissent from the Commission's senior member,[12] the Board of Directors of Light & Power concluded that Kline should have the active assistance of competent eastern counsel (R. 208a, 224a-226a).

Inasmuch as the hearings before the SEC were conducted at its offices which were then located in Philadelphia, and the various court proceedings took place before the District Court of Delaware and the Court of Appeals for the Third Circuit, the Board recognized that employment of Philadelphia counsel would subserve both the convenience and economy of the company and its general counsel. However, the directors had in mind something more than retaining local counsel merely to serve as liaison between their general counsel in Kansas, their officers in Chicago, and the SEC in Philadelphia, and to make available the facilities of his office to the company and its general counsel. Although Kline was to remain in active charge, the Board of Direc-

12. Commissioner Healy dissented from the Commission's acceptance and assertion of jurisdiction with respect to claims which were essentially equity actions of a type long cognizable in the Courts, and having scant relationship to the fundamental purposes of the Holding Company Act.

tors wished the local counsel to participate in the proceedings in association with Kline and to render him active assistance as the proceedings developed; they also wished him to be adequately familiar with the various phases of the case and the record so that he could carry on with the proceedings in the event Kline became ill or otherwise unavailable in the course of what promised to be, and turned out to be, protracted and difficult proceedings of the utmost importance to the company and its security holders.

Masterson was selected by the Board of Directors on the recommendation of the President of Light & Power, who had encountered him in connection with an earlier phase of the case and who had also received a favorable report concerning Masterson from a member of a prominent Chicago law firm (R. 225a-226a).[13] The actual details of the retainer were arranged with Masterson by Kline, and it was clearly understood that the allocation of work as between Masterson and Kline would be made by Kline (R. 205a, 225a). With respect to compensation, Kline asked Masterson if he "would go in the case on a per diem basis", and Masterson replied that his minimum per diem was $250 (R. 205a). Kline asked whether he would consider "an arrangement of a retainer of $100 a day and expenses, with the ultimate compensation to be paid at the end of the case." Masterson agreed, the arrangement was duly authorized by resolution of Light & Power's Board of Directors, and he embarked upon his services (R. 206a-208a).

In pursuance of the understanding that he was to become adequately conversant with the case so as to assist Kline actively and be in a position to take over fully if necessary, Masterson immediately proceeded to Chicago where he spent a full week (June 14-19, inclusive), in intensive conferences with Kline and company officials and financial experts, and in familiarizing himself "with the

13. The record establishes that Masterson is a lawyer of long and varied experience at the bar, including a considerable amount of trial work as well as financial, corporate and reorganization practice (R. 207a, 213a, and 219a).

background and history of the company and its intercorporate relations with a great number of other companies" (R. 206a). Upon the resumption of the hearings before the SEC on June 21, 1943, Masterson appeared on behalf of Light & Power along with Kline, for the first time.[14] Thereafter, over the course of the next four years until the conclusion of the hearings before the SEC in October 1947, Masterson or an associate [15] represented Light & Power at all the more important hearings, either together with Kline or alone. Over the entire period, there was a total of approximately 159 such hearing days, on about half of which Masterson or his associate was the only counsel for Light & Power present. Many of these hearing "days" extended late into the night, since it was necessary after adjournment of the hearing to interview witnesses, and prepare evidence, motions and briefs during the more intensive phases of the case.[16]

---

14. This first session lasted for six straight days, and then adjourned to permit the preparation of additional testimony and documentary evidence. The hearings reconvened for another full week in July, and again in August, September and October. Subject to longer interim adjournments, this was more or less the pattern of hearings followed over the ensuing four years, although some sessions of hearings would continue for two or three weeks with recess only for holidays. (See schedule of hearings attended by Masterson, R. 199a-203a.)

15. On a relatively few occasions when Masterson was unavoidably absent, he was represented by an attorney from his office named Palmer (R. 213a).

16. For example, Masterson testified, without contradiction:

"We worked out in Chicago from nine or ten o'clock in the morning until 12 and one the next morning." (R. 206a)

* * *

"When Mr. Kline came to Philadelphia and finished over at the Commission at 4:30—that was near the end of the case—we would get together either in my office or in his hotel room, and as I told you before, worked sometimes until one or two in the morning." (R. 214a)

* * *

"When the Commission ousted us as counsel for Light & Power in the claim-over against North American and we appealed that case to the Court of Appeals, I argued that before

The most intensive periods of hearings for Kline and Masterson were those relating to the claims of Illinois Power against Light & Power and the latter's defenses thereto. It was in this crucial phase of the proceeding that Kline, with Masterson's assistance, carried the exclusive responsibility of the case on behalf of Light & Power and "performed it well", as the SEC stated.[17] A much less intensive role was played by Kline and Masterson in that phase of the proceedings which dealt with the "claim-over" asserted by the Condon group against North American on behalf of Light & Power. As has been indicated, Light & Power was strongly opposed to the interjection of any "claim-over" issues against North American until there had been a determination as to what, if any, liability could be found against Light & Power in respect of the sharply contested Illinois Power claims.[18] Masterson appeared and

---

the Court of Appeals. In all other matters, I was advising with, working with Mr. Kline. There were motions and motions and motions, briefs that we had prepared in our office, research that occurred during the course of the trial on legal points that were raised." (R. 201a)

17. See, for example, the Recommended Decision of the Public Utilities Division, adopted by the Commission, where in discussing Kline's services, it is stated (R. 53a):

> "In the case of Kline, it is clear that he had a great responsibility in representing Light & Power in the conduct of the claims case. He accepted a difficult task and, insofar as the claims of Illinois Power against Light and Power are concerned, performed it well."

18. It is to be noted that in connection with the ultimate compromise settlement of the Illinois Power claims, there was no determination of the merits of this controversy; and although Light & Power made certain payments in connection with the settlement it also received various benefits thereunder so that, as the SEC found, it is doubtful whether Light & Power actually sustained any out-of-pocket cost. Thus, the Commission stated:

> "The proposed settlement reached after full arm's-length bargaining between completely adversary parties, is of benefit to both sides. Light & Power will effectively terminate this litigation and take a large step forward toward being in a position to complete its long-deferred liquidation. In addition it is uncertain to what extent the out-of-pocket expense of settlement

argued before the Court of Appeals in support of Light & Power's petition for review of the SEC's order permitting Condon to file and assert the "claim-over". When the Court held the order not reviewable at that time, Light & Power decided to adopt a position of watchful waiting with respect to the claim-over and to do whatever was necessary to "protect our record" because the Circuit Court had determined that it [the SEC order] was an interlocutory order (R. 210a). Kline requested Masterson to attend the hearings on the claim-over, press an objection to all of the testimony that was offered by Mr. Condon and take whatever action was necessary to exclude anything prejudicial to Light & Power (R. 210a). In order to limit his attendance at these hearings to the minimum believed necessary for the protection of Light & Power's position, Masterson attended only the more important of the hearings held on this phase of the case. Following the filing by North American and Light & Power of the Step I Plan and the approval by the SEC of the various phases thereof, Masterson appeared with Kline in behalf of Light & Power in all phases of the enforcement proceedings before Judge Leahy during 1947.[19]

The final outcome of all these various proceedings was, from the viewpoint of Light & Power and its stockholders, highly favorable.[20]

---

represents an actual cost to Light & Power. Because of the form of the settlement, Light & Power will have strengthened its equity in Illinois Power and to a part of the extent that Illinois Power benefits from the settlement, Light & Power does likewise." (*North American Co. and Its Subsidiary Companies*, H. C. A. R. No. 7375, p. 25).

19. R. 215a.

20 Shortly after Illinois Power filed its $26,500,000 claim against Light & Power, the Commission envisaged that if this claim were upheld, Light & Power's assets might be insufficient to satisfy even the claims of all its creditors (*North American Co.*, 14 SEC 576, 579). At the conclusion of these proceedings, after Light & Power had discharged all claims of creditors and had disposed of the Illinois Power claims, the Commission stated the evidence established that the value of the assets remaining for Light & Power's stock-

When all SEC and Court proceedings had been completed, pursuant to the request of the SEC all counsel and financial experts who had rendered services in the various phases of the proceedings filed statements of their claims for compensation and reimbursements of expenses. Masterson set forth a brief chronological schedule showing the rendition of services by him on behalf of Light & Power over the four years and five month period June 11, 1943-November 4, 1947 aggregating 219¾ days,[21] on which he credited $21,975 received from Light & Power at the agreed interim retainer rate of $100 per day.[22] He stated he believed that $200 per day would constitute fair and reasonable compensation for the services performed by him, and therefore requested payment of an additional $21,975 (R. 197a-203a).

At the subsequent hearings before a hearing examiner of the SEC in June and July 1950 at which the various claimants, including Masterson, testified and were cross-examined by SEC counsel, Kline as general counsel of Light & Power stated that the Board of Directors of Light & Power believed the requested fee of Masterson was "reasonable" (R. 224a). Thereafter, North American Company and Light & Power filed in the record a joint

holders was somewhere between $70,000,000 to $90,000,000, without giving consideration to any contribution made by North American Company to the public common stockholders of Light & Power (*The North American Company and Its Subsidiary Companies,* H. C. A. R. No. 7514, p. 29). While the advance in the market value of Light & Power's assets played a role in this remarkable achievement, it cannot be doubted that Light & Power's success in discharging the Illinois Power claims without any determinable cost to it (*supra,* note 18) was attributable to the extremely strong record which Light & Power's attorneys made in the defense against these claims.

21. This was subsequently itemized as 159 hearing days and 60¾ days additional of office work and conferences.

22. He also credited $615.47 received as reimbursement of out-of-pocket disbursements. None of these reimbursements included any part of his office overhead, which totalled between $35,000 and $40,000 per year (R. 214a).

memorandum dealing with the fees of certain of the claimants, including Masterson, which stated: "Since the hearings Mr. Masterson and representatives of Light & Power have agreed that a fee of $31,975 will be mutually satisfactory."[23] The memorandum further stated with respect to the adjusted Masterson fee and the others discussed therein: "Accordingly, each of the foregoing amounts represents not a unilateral claim but a fee fixed and determined to be fair and reasonable after discussion with representatives of Light & Power and/or North American" (R. 204a).

SEC and District Court Decisions.

In its Memorandum Opinion and Order dated May 7, 1951, the Commission recognized that respondent had performed substantial services, but deemed it significant that "Masterson was subordinate to Kline who has received a substantial allowance". It also thought Masterson's services "duplicated those of Kline to a considerable extent, and were to a degree unproductive."[24] While the Commission made a passing reference to the agreement between Masterson and Light & Power, it did not otherwise discuss it or in any way indicate that the Commission regarded it as entitled to consideration. The Commission thereupon entered an order denying allowance to Respondent of any

23. R. 204a. This amount included the $21,975 paid to Masterson over the period 1943-1947 under the arrangement for the payment of the interim compensation of $100 per day, thus leaving a balance due Masterson of $10,000.

24. The Commission's rationale, as stated in the concluding paragraph of its laconic opinion, is as follows:

> "Masterson worked on various applications, motions and briefs, interviewed witnesses in preparation for trial and consulted with Kline as to trial methods, and attended numerous hearings and conferences. We have recognized his contribution by approving the payment to him of $21,975. However, Masterson was subordinate to Kline, who has received a substantial allowance, and his services duplicated those of Kline to a considerable extent and were to a degree unproductive." (R. 67a)

"further sum in addition to fees and expenses already received by him" (R. 70a).

Some months following the issuance of the foregoing opinion and order of May 7, 1951, the SEC brought the foregoing determination as to the fee claims of Masterson and certain other aggrieved claimants before the District Court of Delaware for judicial review and "enforcement"; [25] and at the same time its attorneys obtained from Judge Leahy the signature of an order restraining Masterson and the other claimants from instituting any proceedings "in this or any other forum" with respect to their claims for compensation for services in connection with the proceedings relating to Light & Power's dissolution and the disposition of the various claims (R. 14a). In response to the order of the Court, counsel for Masterson and for a claimant named Dabney, filed with the District Court formal statements of objections to the SEC's Supplemental Application No. 2; and Masterson's counsel petitioned the Court to grant him affirmative relief with respect to the additional $10,000 of compensation payable under the agreement between Masterson and his client Light & Power.[26]

On December 3, 1951, after having received briefs and heard oral argument, Judge Leahy issued his opinion upholding the SEC's determination as to Dabney, but revers-

25. In its application filed with the District Court termed "Supplemental Application No. 2" (R. 8a-16a) the SEC asserted, among other things, that:

> "Certain of said fee claimants indicated to the Commission that they proposed to contest the fairness of said provisions of Plan I and Amended Plan I and to seek review of the Commission's denial of their applications for fees. This Court having taken exclusive jurisdiction of Illinois Power, Light & Power and North American, and all their respective assets for the purpose of carrying out the terms and provisions of Amended Plan I * * *, *this Court has full jurisdiction to review said determination of the Commission and to pass upon the fairness of the provisions of said plans relating to the denial of payment of fees to the aforesaid claimants.*" (Italics supplied.)

26. R. 70a-71a.

ing as to Masterson. With respect to Dabney, the Court found that there was substantial evidence on the record to support the SEC's determination, but with respect to Masterson, the Court found the Commission's determination not supported by substantial evidence on the record nor in accordance with legal standards.

The Court made clear that on the basis of its examination of the record evidence, it felt that there was ample justification for Light & Power's view that "this litigation involved tremendous amounts of money; and due to the complexity of the legal proceedings and the long tenure of the litigation, it was to the best interest of Light & Power that it be represented by more than one attorney." [27] The Court pointed out that the services of attorneys associated in the trial of a complex litigation "may be highly complementary, even though 'duplicative' "; and it emphasized that "Both Masterson and Kline, the record discloses, worked in 'close harmony' ",[28] and that Kline also "rejected" the SEC's contention that Masterson's services were "merely duplicative." [29] The Court further pointed out that the record established that the $100 interim per diem received by Masterson, to which the SEC held he should be limited, "would not be sufficient to cover his routine office expenses",[30] and that "every party in interest except the SEC", including the Board of Directors of Light & Power as well as North American (which would in practical effect be the payor of the fee) [31] thought the $150 rate "was a reasonable attorney's fee".[32] The Court concluded, "after an examination of Masterson's services", the com-

27. R. 80a.

28. Ibid.

29. R. 79a.

30. R. 80a.

31. Under Plan I North American became the recipient of all Light & Power's residual assets. It had been represented by its own counsel throughout the proceedings and was thus fully familiar with the services rendered by Masterson for Light & Power.

32. R. 80a.

promise agreement reached between the attorney and his client should be given effect.

The SEC petitioned the District Court for rehearing, professing to construe the Court's opinion as a holding that the SEC lacked jurisdiction and authority in connection with plans under § 11(e) of the Holding Company Act to supervise or in any way disturb fee arrangements entered into between a holding company and its attorneys. Judge Leahy granted the SEC's petition for rehearing, and thereafter received additional briefs and heard further argument from the parties and from an *amicus*. On July 16, 1952, the Court issued its supplemental opinion dealing with the rehearing, which in substance reaffirmed the conclusion, and elaborated briefly on some of the reasoning set forth in the Court's opinion of December 3, 1951; and on August 25, 1952, the Court entered its order.[33] On appeal therefrom, a unanimous Appellate bench held that:

> "Upon consideration of the record we are of the opinion that the District Court's action was a permissible exercise of its judgment in the performance of its reviewing function and that it should not be disturbed." (202 F. 2d at 639)

REASONS WHY THE WRIT SHOULD BE DENIED.

I. A Determination of the Fanciful Issue Posed by the Petitioner Would Not Affect the Outcome of the Case at Bar.

(A) We are constrained to point out that Petitioner, in the major argument set forth in its brief, as well as in its statement of "Questions Presented", has sought to give the issues presented a twist which is decidedly not warranted by the decisions of the Courts below.

Petitioner seeks to construe the District Court's decision as a holding that the SEC must accept as "con-

33. R. 85a-86a.

clusive" all fee arrangements between holding companies and their attorneys unless the Commission can show that a particular agreement is "unconscionable". We submit this is a distortion of the Enforcement Court's decision, which held no more than that the specific agreement here involved, negotiated at arm's-length between a company and specially-retained counsel for valid legal services duly performed in a complex and crucially important litigation, was arbitrarily brushed aside by the SEC in the face of the record evidence establishing both the fairness and reasonableness of the agreement and the unfairness of the SEC's determination.

Taken separately or together, neither of Judge Leahy's opinions stands for the proposition that agreements between companies and their counsel for legal services in Section 11(e) proceedings must be given conclusive weight or even presumptively conclusive weight in determining the value of those services. Both opinions made it clear that "under the facts of the case at bar" (R. 84a) [34] the Court found that the compensation agreed upon by the attorney and client in the instant case had been unjustly and unreasonably denied by the SEC. To be sure, the Court did accord weight, and properly, to the managerial judgment that "this litigation involved tremendous amounts of money; and due to the complexity of the legal proceedings and the long tenure of the litigation it was in the best interest of Light & Power to be represented by more than one attorney".[35] But it did so not only because this was the judgment of the Board of Directors which bore the full legal responsibility for protecting the company's assets from the highly dangerous assault which had been launched

34. Cf. the similar emphasis in the first opinion on "the facts of *this* case" (R. 81a; the italics are the Court's), and the following phrase "after an examination of Masterson's services", which examination the Court had made and discussed in the preceding pages of the opinion.

35. R. 80a; 101 F. Supp. at p. 936.

thereon, but also because the record abundantly established the reasonableness and indeed the wisdom of that managerial decision "in the factual context here" (R. 85a).[36]

36. 106 F. Supp. at p. 687.

The Commission's critical references to the alleged "duplication" of services which resulted when both Kline and Masterson attended hearings were unjustified not only for the reasons Judge Leahy pointed out (R. 80a; 101 F. Supp. at p. 936), but also in the light of the particular facts of record in this case and the ordinary practice in even far less protracted and complex proceedings under Section 11(e). In the instant proceedings, which stretched over a period of more than five years and involved both enormous sums of money and an enormous record, virtually every major party in interest had to be and was represented by more than one attorney, whether through the services of several members or associates of one firm, or independent associate counsel, or both. An example of the latter was the situation as to Illinois Power Company, which was represented by two prominent Chicago law firms (Mayer, Meyer, Austrian & Platt and Pam, Hurd & Reichmann (R. 57a-64a). At times each of these firms sent more than one representative to attend the hearing and rarely were they represented by a single attorney. Notwithstanding a specific finding that the services of these two firms were "to a certain extent duplicative" (Recommended Decision of the Division of Public Utilities, page 19) the Commission approved the full amount which Illinois Power had paid those firms, an aggregate of $457,000 in compensation plus some $37,000 in disbursements (R. 59a, 64a). Similarly the Commission approved payment of $500,000 to Sullivan & Cromwell, counsel to North American, which had had two partners and four associates working on various phases of the case, even though the Division alleged the services of that firm in some respects unnecessarily "duplicated" those of counsel for Light & Power.

Certainly, none of the participants in this case could point to more justification and need than Light & Power for adequate, and indeed ample, legal representation. None was more directly involved nor had so great a stake. It is to be borne in mind that these proceedings not only related to the plan of liquidation of Light & Power, but also to the adjudication of staggering claims asserted against it aggregating more than $26,000,000, an amount which there was reason to believe exceeded the actual value at that time of the entire equity available for Light & Power's security holders. In the face of these factors, it seems almost incomprehensible that anyone would question the prudence and justification of the decision reached by Light & Power's Board of Directors that its general counsel Kline (located in Kansas) should have the maximum assistance of ex-

Similarly, in upholding the compensation at the rate of slightly less than $150 per day embodied in the final agreement between attorney and client, the Court properly attributed weight to the circumstance that this compensation was negotiated at arm's-length and found appropriate by those who were to pay it—the managements of Light and Power and North American Company, both of which had an intimate first-hand knowledge of Masterson's services rendered without as well as inside the hearing room. But it is entirely plain that the Court's approval of this compensation gave consideration to many other factors of record, including the evidence as to the attorney's many years of experience as a trial attorney and the amount of his office overhead (R. 207a-213a), the detailed and indeed conceded nature of his extensive services in the case at bar,[37] his close collaboration with Kline to produce a highly favorable outcome for the company and its stockholders,[38] and his usual and customary $250 charge for services on a

---

perienced Eastern counsel, both at the hearings and in preparation therefor, to be able to carry on in the event of Kline's incapacitation, and to spare Kline the time and expense of the many additional trips east he would otherwise have had to make (R. 224a). It is further to be borne in mind that the highly successfully outcome for Light & Power, fully vindicated the handling of the case by the management and attorneys of Light & Power.

37. It may here be observed that in contrast with Petitioner's unwarranted intimations that Respondent did little more than waste time (the amount of which it now even seeks to impugn, although the Commission itself did not, and the innuendo is utterly baseless) and its brash reference to his "insignificant contribution" (Petition, p. 11), even the Commission conceded and formally found on the record that substantial services were rendered over the five-year period, outside as well as within the hearing room:

> "Masterson worked on various applications, motions and briefs, interviewed witnesses in preparation for trial and consulted with Kline as to trial methods and attended numerous hearings and conferences." (R. 67a)

38. Cf., the Court's finding:

> "Both Masterson and Kline, the record discloses worked in 'close harmony.'" (R. 80a; 101 F. Supp. at p. 936)

per diem basis (R. 219a). Indeed, not only did Respondent's testimony on this latter point stand on the record uncontradicted and unchallenged, but the record also established that this level of compensation was reasonable and indeed modest in relation to the scale of attorneys' compensation which the SEC itself considered appropriate and actually allowed to virtually all other counsel in this case whose services were found compensable.[39]

The record on which the Enforcement Court made its determination, and with which Judge Leahy was familiar by virtue of his long years of association with the various phases of the proceedings, abounded with proof of the difficult problems of law and evidence with which Kline and Masterson were required to deal on behalf of Light & Power in bringing the case to its successful outcome. In its Opin-

39. Thus, the Commission by its Memorandum Opinion and Order of December 21, 1950 (R. 57a-60a) approved compensation of $370,000 for the law firm of Mayer, Meyer, Austrian & Platt, which involved a total of approximately 9,000 hours of time. (Recommended Findings of the Division of Public Utilities [unprinted], p. 16.) This is $300 per 8 hour day, averaged for the time of juniors as well as partners. In addition, the Commission approved payment of $87,500 to Pam, Hurd & Reichman, another firm which represented the same client, and which kept no records nor produced even an estimate of time expended (Recommended Findings [unprinted], p. 17.

The Commission also allowed $500,000 to the law firm of Sullivan & Cromwell for services involving some 16,000 hours (of which less than half represented partners' time), or a rate of compensation of more than $30 per hour.

Compensation of $100,000 was allowed by the Commission to an attorney named Jackson (counsel to the Dana group which prosecuted the unsuccessful appeal from the approval of the Compromise Plan) which, on the basis of the 2,030 hours of time expended (Recommended Findings [unprinted], p. 33) is equivalent to about $50 per hour. Other applicants similarly were allowed compensation within the range of $30 to $50 per hour.

Our survey of SEC fee decisions in other cases, confirms that the range of compensation repeatedly approved for counsel in 11(e) plans is from $30 to $50 per hour, and that in the case of company counsel a substantial portion of the time compensated on this basis is that of junior associates and others of non-partner status.

ion approving the final plan, the Commission itself acknowledged these factors as follows:

> "The record is impressive in its disclosure of the difficult factual and legal questions involved. The specific defenses have involved difficult questions of res judicata, corporation law, dividend law, burden of proof, dominant stockholder's obligations, as *well* as other legal questions. Each claim has been controverted on its facts or by interpretation of the facts." (*North American Company and Its Subsidiary Companies,* H. C. A. R. No. 7375 (page 23 [1947].)

It was on the basis of all the foregoing record evidence and the many other factors heretofore discussed that the Enforcement Court in its Order of August 15, 1952, made the formal finding that

> ". . . the fee to said James F. Masterson of $10,000 agreed to be paid to Masterson by North American Light & Power Company is on the basis of the facts of record, found to be fair and reasonable, and it is hereby allowed . . ." (R. 86a)

(B) The SEC's attorneys commenced to give the District Court's decision the peculiar gloss with which it is embellished in the Petition at bar, shortly after the issuance of the District Court's initial opinion of December 31, 1951. In their petition for rehearing in the District Court they urged that the Enforcement Court had predicated its decision on the mistaken view that the SEC entirely lacked jurisdiction to pass upon fees and expenses in connection with 11(e) plans or to interfere in any way with arrangements between holding companies and their attorneys. Notwithstanding the District Court's supplemental opinion of July 16, 1952, seeking to make crystal clear that such was not the intendment or purport of the Court's decision, the SEC's attorneys proceeded to press vigorously upon the

Court of Appeals substantially the same peculiar reading of the Enforcement Court's decision.[40]

The Court of Appeals in its unanimous per curiam opinion rejected this misconstruction, and expressly found that the District Court's decision held only

> "*that in all the circumstances of this case* the Securities and Exchange Commission exercised its power over fees in the way that was not just and reasonable when it awarded Masterson attorney's fees in an amount less than that sought by him and agreed upon by his client the North American Light & Power Company." [41] (Emphasis supplied.)

This accurate interpretation of the District Court's decision was followed by the Court of Appeals' conclusion that on the basis of its own consideration of the record, the District Court's determination should be affirmed.[42]

In the face of the limitations placed upon the decision by the opinions of both Courts below, it seems strange and paradoxical to find Petitioner persisting in the fanciful attempt to inflate these opinions into a ruling of law of general applicability to fees in Section 11(e) proceedings which "deny the Commission effective control over such fees to the extent agreed to by a holding company client" (Petition p. 14). In urging this interpretation of the Enforcement Court's decision on this Court, presumably Petitioner is acting at the behest of the Commission.[43] But

---

40. Thus, in the Commission's principal brief before the Court of Appeals (dated December, 1952) it was asserted (page 26):

> "In effect, therefore, the district court imposes on the Commission an unqualified mandate to accept an agreement made by holding company management *regardless of any effect it might have upon the purposes of the Act, or, even, the fairness and equity of the plan.*" (Emphasis supplied.)

41. 202 F. 2d at p. 639.

42. Ibid.

43. The petition in fact recites that it is brought by the Solicitor General "on behalf of" the Commission.

curiously enough, the Commission itself apparently has two versions of the effect of this decision, depending on whether it is *contending* for broader authority before the Courts or actually *exercising* authority in proceedings before it. Thus, one week after the filing of the Petition herein, the Commission in its Findings and Opinion rendered with respect to the fees of company counsel in another Section 11(e) proceeding, declared with respect to Judge Leahy's decision in the case at bar:

> "In the case cited [In re North American Light & Power Company, 101 F. Supp. 931, D. Del. 1951] we had rejected the request of counsel for a company in Section 11(e) proceedings for an additional fee in an amount agreed to by the company, and upon review the district court allowed the additional fee because of the agreement between counsel and company. On rehearing, the Court, although disclaiming any intention to hold that this Commission 'has no jurisdiction whatsoever in setting the fee of counsel who appear before it in a § 11(e) proceedings', reaffirmed its approval of the additional fee, stating that under the facts of the case at bar, the SEC did not give full weight to an important factor in setting the lawyer's fee, i.e., the lawyer-client relationship. *We do not construe this decision to mean that this Commission cannot determine the amount of a reasonable fee to be less than that agreed to by the company and its counsel.*" [44]

The Commission thereupon proceeded to allow a lesser amount as compensation to company counsel than that provided for in the management agreement, merely stating

---

44. *Public Service Corporation of New Jersey and its Subsidiary Companies,* H. C. A. R. No. 12000, page 12 (June 16, 1953). Footnote references in the original (consisting of citations) have been omitted from the foregoing excerpt, and emphasis supplied.

that it was "excessive" but without any showing or even suggestion that it was "unconscionable".[45]

One of the Commissioners (Rowen) dissented from the reduction which the majority imposed on company counsel in the foregoing decision, stating that "in view of the extreme complexity of the proceeding, the experience and ability of this firm, and its notable contribution to the successful reorganization of Public Service, I am unable to conclude that the fee requested is unreasonable."[46] For purposes of his dissenting Opinion, Commissioner Rowen sought to extract the maximum of support from the only two judicial decisions which have set aside SEC determinations as to the fees of company counsel, the decision of the Enforcement Court in the instant case, and that of Judge Nordbye in the *Northern States Power Company* proceedings.[47] It is therefore significant to observe that the strongest interpretation the dissenting Commissioner could attribute to either of these decisions, or both together, was that they appear to grant to agreements between the company and its counsel "substantial weight as a measure of the reasonableness of a fee application submitted in accordance therewith." This is to be compared with Petitioner's present contention that these decisions require the Commission to give "conclusive" weight to such agreements unless shown to be "unconscionable."[48] Moreover,

45. As compared with the fee of $150,000 agreed upon between the company and its counsel, equivalent to approximately $34 per hour, the Commission allowed $125,000, equivalent to approximately $30 per hour for all time, including that of juniors.

46. Id. at page 30.

47. *In re Northern States Power Company* (unreported), D. Minn., Civil Action No. 2673, Jan. 12, 1953.

It is to be noted that in only one other decision has there been a reversal of the Commission in a case involved counsel fees; that case did not concern company counsel but did involve the reasonableness of the SEC's attempted disqualification of a committee counsel from receiving any fee. *SEC v. Cogan,* 201 F. 2d 78 (C. A. 9, 1952). Petitioner states that the Commission "concluded" not to seek certiorari in that case (Petition, note 21).

48. Petition p. 2.

the dissenting Commissioner thereupon went on to agree with the majority that in any event these decisions do *not* preclude the Commission from reducing "the agreed upon fee", provided the Commission determines that "otherwise the resultant fee would be unreasonable".[49]

It thus appears that the SEC itself, in marked variance from the contentions of its Counsel in the present Petition, plainly recognizes that the decision of the Enforcement Court in the instant case was predicated, as the Enforcement Court stated, on "the facts of the case at bar"; and that it does not preclude the Commission from reducing the agreed fee of company counsel, where the Commission properly—but not arbitrarily and dictatorily as in the instant case—determines that the resultant fee would be unreasonable.

(C) A further word is added concerning Judge Nordbye's decision in the *Northern States Power* case, inasmuch as it has been mentioned in the excerpt from Commissioner Rowen's Opinion quoted above, and is also referred to in the Petition (page 19), which states that copies are being filed with this Court. In view of the fact that this decision is presently pending on appeal before the Court of Ap-

49. Set forth below is the pertinent paragraph from Commissioner Rowen's dissenting Opinion:

> "While the Commission's authority to pass upon the compensation to be allowed participants in holding company reorganizations has been confirmed in the courts, certain recent judicial pronouncements would appear to grant to agreements between the company and its counsel, relating to the compensation of such counsel, substantial weight as a measure of the reasonableness of a fee application submitted in accordance therewith. This, of course, does not preclude the Commission from reducing the agreed upon fee, but apparently such reduction must be based upon considerations sufficient to overcome the persuasive force of a negotiated arrangement between the parties principally involved. The Court's opinion in *In re Northern States Power Company*, (unreported) (D. Minn., Civil Action No. 2673, January 12, 1953), indicates, *inter alia*, that an agreement of this nature may be disregarded if the Commission determines that otherwise the resultant fee would be unreasonable."

peals for the Eighth Circuit, we question the propriety of its interjection here by Petitioner at the present time. However, since Petitioner deemed this procedure essential in order to support its request for a writ in the instant case, presumably recognizing that this case would not justify the issuance of the writ on its own merit, we hope the Court will examine Judge Nordbye's decision and observe for itself how each of these two decisions turns on its own peculiar facts and relates to proceedings fundamentally very different in character.

The *Northern States* case involved no claims and cross-claims between subsidiaries and parents nor any "claim-over" litigation in the nature of a vastly complex $26,000,000 derivative stockholders suit,[50] such as occupied the preponderant portion of the time and efforts of company counsel in the instant case. As we read Judge Nordbye's Opinion, the principal point of relationship between *Northern States* and the instant case is that Judge Nordbye found upon his review of the record evidence that the Commission's action in that case was likewise arbitrary and unreasonable, although the factual situations were very different and the treatment meted out to Respondent by the Commission in the instant case [51] considerably more harsh. It appears to us that the Enforcement Court's ruling in *Northern States,* like that in the case at bar, is not that the

50. As has been pointed out *supra,* the Commission's senior member, Commissioner Healy, objected to the SEC's assertion of jurisdiction over these extraordinary inter-company claims on the ground that the Courts rather than the Commission were the proper forum for their adjudication.

An examination of Judge Nordbye's painstaking analysis of the *Northern States* proceedings which is reported at 80 F. Supp. 193 (D. C. Minn. 1948) makes it clear that no such extraordinary factors were involved in those proceedings.

51. In *Northern States* the Commission allowed a fee of $125,000 to one of the company counsel (Flynn) which was some $21,000 less than the amount agreed to between his firm and the company; it allowed $40,000 to another company counsel (Youngquist) which was some $14,000 less than the amount agreed upon with the company.

Commission must be bound by fee arrangements between companies and their counsel "unless these agreements are shown to be unconscionable", but rather that the Commission may not impose results which the preponderant record evidence establishes as arbitrary and unfair. A bona fide arm's-length agreement between company and counsel is one evidentiary factor entitled to weight, but as Commissioner Rowen pointed out, Judge Nordbye expressly recognized such agreements may be overridden if they do not pass the tests of fairness and reasonableness. In *Northern States,* not only did the Court find on the basis of its review of the record that the agreed-upon compensation was reasonable, but it also found that the Commission's rationale for imposing the reductions was unsound and capricious in that it retroactively punished counsel for advancing in good faith certain plans and presenting certain evidence, in accordance with the wishes and instructions of his client, but which apparently did not ultimately meet the Commission's approval in full.[52]

---

52. Thus Judge Nordbye stated: "There is no contention or showing by the Commission that the amount claimed by Mr. Flynn is unreasonable in view of the legal services which he actually performed. There is no testimony which contradicts or questions the number of hours devoted to the proceeding or the reasonableness of the hourly rate requested by him. His skill and experience are not controverted. Concededly, the questions involved in this proceeding and affecting these companies were intricate, novel, and required high legal skill. It is not surprising, therefore, that the companies' views and policies in carrying out the apparent purposes and objects of the proceedings did not conform at all times to the Commission's views. To attempt to effect compliance with the Act necessarily presented difficult problems. Whether all of the companies' decisions, therefore, proved to be ultimately right or wrong, they were entitled to legal assistance and advice in doing that which they determined to be compatible and in furtherance of the objects of the proceeding. *If legal counsel engaged by these companies, and in carrying out their wishes, are to have their legal fees subjected to the arbitrary rule that, unless the services are ultimately proved to be in furtherance of the policies and plan finally approved by the Commission and the Court they will be disallowed, it would be hazardous indeed for any counsel to accept employment under such circumstances.* There

It is not for us to say whether the record in the *Northern States* case does or does not justify Judge Nordbye's decision. If it does not, it is to be presumed the Court of Appeals before which it is now pending will afford appropriate relief. But it does seem to us clear (as apparently it also is clear to the Commission, as has been seen) that Judge Nordbye in that case did not, any more than did Judge Leahy in the instant case, enunciate any such legal doctrine as that which Petitioner contends is presented by the case at bar.

(D) As the foregoing discussion indicates, Petitioner has improperly sought to transform judicial findings based on the facts of record in the instant case, as made by the Enforcement Court and affirmed by the Court of Appeals, into a broad legal question of the jurisdictional authority of the Commission to interfere with some hypothetical unfair or excessive fee arrangement between some hypothetical holding company and its counsel. By this unwarranted transformation of the decision of the Courts below, which turned on the assessment of the record evidence, Petitioner seeks an opinion from this Court on an issue which is not present in or determinative of the case at bar. We do not believe that the further assessment of the record evidence in the instant case presents a question important in the administration of Section 11 of the Holding Company Act. The complex inter-company claims and claim-overs which occupied the activities of counsel in this case were in many respects unlike those in any case which has come before the Commission, and certainly were wholly unlike any factual issues in the few remaining Section 11 proceedings presently pending in their final stages. Nor is it conceivable that there can be any such others in the future,

---

is no contention by the Commission that the fees, if allowed as requested and approved by the companies, will affect in any way the fairness or equitableness of the plan, or that the payment will impose any unreasonable financial burden upon either the companies or their security holders." (Emphasis supplied.)

for the Commission itself several months ago announced that "the Section 11 (integration and simplification) program under the Holding Company Act has been substantially completed".[53] For these reasons, certiorari should be denied.

II. The Decision Below Was Clearly Correct.

A. The Judgment Below Places No Improper Burdens On the Commission's Fee Jurisdiction.

(1) In the factual context of this case, the issue before the Courts below was not whether the SEC may supervise the payment of fees in a Section 11(e) proceeding, but whether the Commission may impose arbitrary and drastic rulings, unsupported by any record evidence, and with complete immunity from review by any reviewing tribunal. As has been shown, the Courts below found that in the case at bar the SEC had "exercised its powers over fees in the way that was not just and reasonable."[54] If, as Petitioner contends, those concurrent findings of the two Courts "deny the Commission effective control over such fees", then what is really being requested of this Court is a ruling that the determinations of the SEC with respect to the allowance or denial of fees in Section 11(e) proceedings shall be absolute, and in essence, final and non-reviewable. Not only is this the inference necessarily to be drawn from the foregoing reasoning, but it appears to us the plain import of Petitioner's repeated suggestions to the effect that the Commis-

53. Under date of May 4, 1953, the Commission issued Release No. 1862 under the Investment Company Act of 1940, announcing the transfer to its former Division of Public Utilities of certain functions previously performed by other divisions and the renaming of that Division as "the Division of Corporate Regulation". Explaining the reasons for these changes, the Commission's statement said:

> "The transfer also is a recognition that the Section 11 (integration and simplification) program under the Holding Company Act has been substantially completed."

54. 202 F. 2d at p. 639.

sion should not be expected to furnish support in the record or otherwise for its determinations as to fees, no matter how prejudicial.[55]

We are at a loss to understand on what basis Petitioner ventures to claim for this administrative agency dictatorial and non-reviewable powers in matters affecting property rights and, indeed human rights, of such substantiality. The Commission in the Courts below did not venture to advance claims of such a character; on the contrary, when it initiated the present proceedings in the District Court for enforcement of its ruling concerning Masterson, its application asserted:

> "[T]his Court has full jurisdiction to review said determination of the Commission and to pass upon the fairness of the provisions of said plans relating to the denial of payment of fees to the aforesaid claimants." (R. 13a)

As has been shown, it was on the basis of this and related allegations that the SEC procured from Judge Leahy an order enjoining Respondent from instituting any proceedings "in this or any other forum" seeking judicial relief from the SEC's Order denying payment of the fee agreed upon with his client.[56] It seems little short of ironical that Petitioner should now contend that to accord to Respondent normal judicial review of the SEC's prejudicial ruling is to

---

55. See, for example, Petition, page 18:

> "Since it would usually be *impossible* for the Commission to sustain such a *burden* in an area where there is as much room for reasonable differences of judgment as exists with respect to reorganization fees, the effect of the holding below is to leave the Commission with nominal responsibility for such fees but without any real power to deal with them." (Emphasis supplied.)

Petitioner couples this argument with assertions that the decisions below require it to prove the fee arrangements between the company and its counsel to be "unconscionable", but as we have previously shown, this contention is entirely fanciful.

56. *Supra*, n. 25.

interfere with the Commission's authority to supervise fees in 11(e) proceedings. In essence, Petitioner wishes to create the appearance of affording judicial review of the SEC's rulings, while denying any real substance to such judicial review.

The fee determinations of the District Courts under Chapter X, and under the predecessor Section 77B, of the Bankruptcy Act *have in innumerable instances been increased or decreased by the appellate courts upon review.*[57] If there can be effective appellate review of the fee determinations of these important *judicial* officials, invested by Congress with a specific grant of statutory authority to fix fees in reorganizations which they supervise in minute detail,[58] we cannot understand how it can be claimed that there should not or cannot be effective judicial review of the fee determinations of the SEC, an agency whose personnel frequently play a prosecutory and partisan role in the proceedings with respect to which the fees are applicable, and an agency whose authority to supervise fees under Section 11(e) is drived only by implication.[59]

---

57. Thus, in *Newman & Bisco v. Realty Associates Securities Corp.*, 173 F. 2d 609, the Court of Appeals for the second circuit modified, without remand, allowances granted by the District Court, stating that this "follows our usual practice". *In Re Consolidated Motor Parts, Inc.*, 85 F. 2d 579, the same court granted an allowance which the District Court had denied. *In Re Mountain States Power Co.*, 118 F. 2d 405, the Third Circuit sharply increased allowances over those granted by the District Court. *In Re Albert Dickinson Co.*, 104 F. 2d 771, the Seventh Circuit increased allowance, also without remand. See also: *In re Prudence Bonds Corp.*, 122 F. 2d 258 (C. A. 2); *In re Detroit International Bridge Co.*, 111 F. 2d 235 (C. A. 6); *Steere v. Baldwin Locomotive Works*, 98 F. 2d 889 (C. A. 3); *Silver v. Rosenberg*, 139 F. 2d 1020 (C. A. 2); *Milbank, Tweed & Hope v. McCue*, 111 F. 2d 100 (C. A. 4); *Smith v. Central Trust Co.*, 139 F. 2d 733 (C. A. 4). The foregoing citations could be multiplied many fold.

58. See Sections 242 and 243 of Chapter X, 11 U. S. C. §§ 642 and 643.

59. Until the decision of the District Court in the instant case, in none of the many Opinions in which the SEC has discussed its asserted fee jurisdiction in 11(e) proceedings has it suggested that the

(2) Petitioner's contention that the Courts below assumed that the Commission's authority over fees in Section 11(e) proceedings is narrow and restricted, and that Respondent so contended, is devoid of merit. On the contrary, Respondent urged in the District Court that the authority of the Commission to pass on the reasonableness of Respondent's fee should be assumed; and that the sole issue should be whether on the record evidence the Commission had properly and fairly exercised that authority.[60] Whatever difficulties the District Court had in ascertaining the precise source of the SEC's jurisdiction over fees in Section 11(e) proceedings in the face of that section's silence on the subjet, Judge Leahy made clear in both his Opinions that *regardless of how broad such authority might be,* if any reviewing power resided in the Enforcement Court the Court felt impelled on the facts of record in this case to hold that Masterson was entitled to his fee, specifically found to be "fair and reasonable". When an *amicus* sought to argue that the SEC in fact did not have authority to pass on the fees of company counsel in 11(e) proceedings, the District Judge rejected the argument as "not in the

---

jurisdiction granted by Section 11(f) with respect to insolvent companies could be thought to confer fee jurisdiction in the fundamentally different proceedings under 11(e). See discussion *infra* at page 37 as to the Commission's express recognition of the fundamental differences between 11(e) proceeding and the reorganization of an insolvent company under 11(f) or under the Bankruptcy Act. For purposes of Section 11(e), the Commission has attempted to rely on what it has described as "inherent equity jurisdiction," buttressed by references to its supervisory authority under other sections of the Act with respect to fees in connection with security issues and acquisitions.

The Commission's most comprehensive discussion of its fee jurisdiction is set forth in *Engineers Public Service Co.,* H. C. A. R. No. 7041, which does not mention Section 11(f), and which reasons that there must be an *implied* equity jurisdiction in the Commission under 11(e) to allow fees.

60. "We would not wish the rights of Masterson to receive the fair and modest compensation which Light and Power has agreed to pay him, to turn on any mere jurisdictional issue". (Brief in Reply to Petition for Rehearing in District Court, page 2.)

case", and an issue which the *amicus* would not be permitted to "engraft".[61] In effect, the Court made clear that even if the SEC had been given the same express and broad grant of statutory authority to fix fees in 11(e) proceedings that the District Judges have in Chapter X proceedings, "I still would have review power—which the SEC concedes—and *in the factual context here,* would exercise such review power to allow for the additional compensation sought by Masterson and agreed upon by his client, the North American Light & Power Company".[62] (Emphasis added.)

However, Petitioner argues that the Enforcement Court in connection with Section 11(e) plans "lacks that direct contact with the activities upon which fee claims are based which it acquires through the exercise of its primary jurisdiction to approve plans in a Chapter X proceeding".[63] If the implications of this argument were valid, they would entirely rule out any appellate review of the fee determinations of the District Judges under Chapter X and indeed would also eliminate virtually *all* judicial review of the determinations of administrative agencies, since the latter are almost always in a postion to claim "first-hand knowledge" because the record of the proceeding was made before them.

Under applicable principles of law, the members of the Commission are required to make their determinations on the basis of the evidence of record, and that same record was before the Enforcement Court when it reviewed the Commission's determination. Any suggestion that the Commissioners who denied Masterson's fee themselves had *first-hand* knowledge of the nature, extent or quality of Masterson's services is baseless. Whereas Masterson commenced rendering his services in June, 1943 and the record in the Plan 1 proceedings was substantially completed in

61. 106 F. Supp. at p. 687.
62. Ibid.
63. Petition, p. 20.

1946, an inspection of the Annual Reports of the Commission to Congress establishes that the name of none of the three Commissioners who rendered the decision as to Masterson is listed as a member of the Commission prior to the Annual Report for 1946. In the Annual Report as of June 30, 1946, one of the Commissioners is listed for the first time. In the 1947 Report a second is listed, and in the 1948 Report the third is named.

In contrast, it may be noted from the numerous citations to the Federal Supplement which are contained in the record of this proceeding that Judge Leahy, the Enforcement Judge, is the one figure who has remained constant in his familiarity with this extensive proceeding from the very beginning. It is difficult to comprehend an argument which seeks to cast upon this highly experienced Judge a purely rubber-stamp role in the proceeding and to clothe a shifting personnel [64] with what amounts, according to the argument made, to virtually non-reviewable jurisdiction.

It is further to be observed in this connection that whereas the Enforcement Judge is a wholly judicial person, the members of the Commission are quasi-judicial persons only. The Commission in some respects is itself a litigant and, as such, it was the Respondent here who

---

64. For example, it may be noted that two of those three gentlemen who issued the decision are no longer connected with the Commission. Before their departure, a special Congressional Committee expressed its concern with the rapid turn-over among SEC personnel stating:

> "Only 7 of the 26 members appointed to the Commission have served for a period of at least 5 years. The average term of the present Commissioners is 35 months. * * * We do not look with favor upon the rapid turn-over of Commissioners, especially when shortly after their resignation they return to practice before the very agency whose laws they sought to administer". (Final Report of the Securities and Exchange Commission Subcommittee to the Committee on Interstate & Foreign Commerce, House of Representatives, 87 Cong. [1952] p. 125.)

brought it into the Court of Appeals to seek to prevent the "claim-over" proceeding as being premature and out of place at that stage of the proceedings. The feelings between a litigant and counsel opposing him are not always the friendliest. That the litigant should be clothed with virtually unreviewable authority in the fixation of his opponent's fee could hardly have been the intention of Congress.[65]

(3) In view of the unblinkable possibility that some persons connected with an agency frequently placed in a partisan role might be led to favor or discriminate against fee claimants on the basis of personal considerations or those related to the earlier controversies, and in the light of the charges of favoritism which have in fact been leveled against this very agency,[66] it might be thought that Peti-

---

65. During the proceedings, there were on occasions sharp disagreements between Respondent and the members of the Commission's staff (Division of Public Utilities) actively engaged in the proceedings, who were clearly partisan to Condon and against Masterson and Kline on the issue of the "claim-over". Although most of these staff members had left the Commission by the time the fee applications were presented, their colleagues in the Division of Public Utilities filed with the Commission the formal "Recommended Decision" urging that Masterson's request be denied (R. 54a) which recommendation the Commission adopted. At the same time the Division recommended the allowance to Condon of a counsel fee of $400,000 for his services in the inconclusive claim-over proceedings, "the largest single fee we have ever awarded to any representative of security holders in a Section 11(e) proceeding and . . . larger than any such fee we have recommended in proceedings under Chapter X of the Bankruptcy Act . . ." (R. 44a). This recommendation was also adopted by the Commission precisely as submitted by the Division (R. 58a).

66. Thus Senator Paul Douglas (Cong. Rec., Feb. 25, 1952, pp. 1318-19):

> "While no illegal or dishonest actions were revealed on the part of Mr. McDonald or other SEC members, the favorable results of the cases involving these brokers who were represented by ex-Chairmen of the SEC lends color to the suspicion of an unusual advantage not clearly warranted by the facts of the

tioner would *welcome* a searching judicial review of the agency's fee determinations, rather than the contrary. Instead, however, it is here contended that the Commission's regulatory jurisdiction has been "frustrated" by the decisions of the two eminent Courts below because the Commission's determination has not prevailed with respect to a $10,000 fee, out of total allowances authorized by the Commission in this proceeding aggregating $2,270,650 (Petition, p. 9).

Petitioner's assertions that it is the desire of Congress for the SEC to be clothed with administrative absolutism in granting or denying fees strike particularly strangely, we submit, against this Court's admonition that:

> "[T]the Administrative Procedure Act and the Taft-Hartley Act direct that Courts must now assume more responsibility for the reasonableness and fairness of Labor Board decisions than some Courts have shown in the past. Reviewing Courts must be influenced by a feeling that they are not to abdicate the conventional judicial function. Congress has imposed on them the

---

cases. * * * The question naturally arises whether to place in the position of head of RFC a man against whom the charge of favoritism has been made. Whichever way he may decide the question, Mr. McDonald will be on the spot. Only the strongest sort of person should be placed in that position."

Cf. Congressman George Bender, Chairman of the Public Accounts Subcommittee of the House Committee on Government Operations, recently quoted in the Commercial and Financial Chronicle of June 11, 1953 (page 56, col. 1) as follows:

> "First, said Mr. Bender, he wants to inquire into 'numerous complaints' he said, that the SEC is playing favorites. He hears, Mr. Bender said, that SEC tends to 'play favorites with its friends and do things which creates a stench against persons unfriendly to the Commission * * * they make the climate healthy for their friends and unhealthy for their enemies.'"

Cf. also, Final Report of the Securities and Exchange Commission Subcommittee to the Committee on Interstate & Foreign Commerce, House of Representatives, 82 Cong. (1952) pp. 117-125.

> responsibility for assuring that the Board keeps within reasonable grounds." [67]

Moreover, there is surely no room for a contention in this case that the administrative determination at issue related to "a specialized field of knowledge, whose findings within that field carry the authority of an expertness which Courts do not possess and therefore must respect." [68] In contrast with the District Judge's intimate and expert familiarity with the subjects of litigation procedures and attorneys' services and fees related thereto,[69] members of the SEC need not be lawyers—and of those who are, it is a matter of common knowledge that many have had relatively little, if any, practical legal experience outside of their administrative posts. Thus, the Chairman of the SEC at the time of the Commission's decision in the instant case, who was one of the three commissioners participating therein, was a non-lawyer who was a former securities dealer at the time of his appointment.[70] It is difficult to perceive that this calling conferred special "expertise" for the particular function under discussion, bearing in mind that the Commission's denial of Respondent's fee turned largely on the purported assessment of such evidentiary factors relating to trial procedure and technique as that Kline played the more articulate role in the hearing room when both company counsel were present, that Respondent was "subordinate" to Kline

---

67. *Universal Camera Co. v. Labor Board,* 340 U. S. 474, 490. While the foregoing language was directed specifically to the Labor Board, the Court stated at page 487:

> "And so we hold that the standard of proof specifically required of the Labor Board by the Taft-Hartley Act is the same as that to be exacted by courts reviewing every administrative action subject to the Administrative Procedure Act."

68. Id. at p. 488.

69. There is no need to expatiate on the breadth of the District Judge's experience in fee matters, not only in connection with Chapter X and other reorganization statutes, but in a wide variety of other equity and statutory proceedings which come before him from day to day. Cf. the District Court's Opinion at R. 77a-78a.

70. Congressional Record of July 25, 1952.

and that therefore Respondent's services were "duplicative".[71]

(4) In sharp contrast with Petitioner's professed consternation at the notion of according weight to an arm's-length agreement between a holding company and its counsel which Petitioner does not even suggest is unreasonable or unfair,[72] the SEC has filed a brief in another case presently pending in the District Court wherein the Commission vigorously asserted that Congress has charged the *managements* of holding companies with broad responsibilities in reorganizations, under Section 11(e), *and that the management's discretion in the exercise of those responsibilities should be recognized, subject only to supervision against abuse.* In that brief, the Commission draws a sharp distinction between the authority of the managements in the reorganization of insolvent companies under the Bankruptcy Act, and its responsibilities in effecting a plan of voluntary compliance for a solvent holding company under Section 11(e). The Commission states:

> "In providing for the reorganization of solvent companies in order to carry out the policy of Section 11, Congress did not see fit to displace existing managements to an extent at all comparable to that which has been deemed expedient in dealing with insolvent companies pursuant to Chapter X of the Bankruptcy Act * * *

---

71. R. 67a, cf. the District Court's Opinion at R. 80a. In this context, the statement of the Ninth Circuit with respect to a comparable attempted assessment by the Commission of the fiduciary standards applicable to an attorney, is apt:

> "If any 'expertise' was involved it belonged to the district judge because of his familiarity with the ancient standards of proper fiduciary conduct as long established in the courts of equity. * * * We think it manifest that the district judge knew more about the subject in hand than did the Commission. We think the trial judge applied the sound rule." (*SEC v. Cogan*, 201 F. 2d 79, 86)

72. See, for example, Petition, page 18, note 10.

> "But a Section 11(e) reorganization . . . differs from a Chapter X or equity receivership reorganization in that until approval of the plan the management continues to function as representatives of its security holders. *The Congress charged it* [the holding company management] *with specific responsibilities to make decisions on behalf of the security holder interests and its discretion in the exercise of these responsibilities should be recognized, subject to Commission supervision designed to check the recognized risk that such powers might be abused.*" [73] (Emphasis supplied.)

This Court, also, has emphasized the important responsibilities which Congress has vested in the managements of holding companies in connection with the formulation and prosecution of plans under 11(e), stating:

> "The Act vests in the officers and directors of a holding company registered under the Act broad powers as representatives of all the stockholders. Besides the Commission, only the management can initiate a proceeding before the Commission to simplify the corporate structure and to effect a fair and equitable distribution of voting power among security holders. Only the management can amend a plan under §§ 7 and 11(e), and this it may do at any time; only the management can withdraw the plan, and this too it may do at will; and even after the Commission has approved a plan, it cannot be carried out without the consent of the management." [74]

Similarly, in his concurring opinion in *American Power & Light Co. v. SEC,* Justice Rutledge made clear that the

---

73. Memorandum of the SEC dated July 1952 filed with the District Court of Delaware in the fee application proceedings in *Matter of Engineers Public Service Company,* Civil Action No. 995 (pages 7, 9).

74. *SEC v. Chenery Corporation,* 318 U. S. 80, 91.

primary purpose of Congress in enacting Section 11(e) was not to achieve financial reorganizations, as is the case in reorganizations under the various sections of the Bankruptcy Act, but to encourage and enable the managements of holding companies to formulate and present voluntary plans of *compliance* with the vital integration and simplification requirements which are embodied in Section 11(b). Thus, Justice Rutledge stated:

> "Both the terms of the Act and the legislative history show that the purpose of § 11(e) was to allow companies affected 'to work out a plan of reorganization to make unnecessary the issuance of an involuntary order for its reorganization . . .,' which could only be issued under § 11(b)".[75]

Congress having thus intended that under Section 11(e) the managements of holding companies should receive a substantial degree of latitude and encouragement to formulate and present voluntary 11(e) plans of compliance to effectuate the purposes of Section 11(b), it is difficult to believe that Congress intended that these companies should be precluded from retaining counsel of their own choice and agreeing to pay them for such services a reasonable compensation.[76] Since the Enforcement Court found on the basis of the facts of record the compensation agreed to between Masterson and his client to be "fair and reasonable" (R. 86a), and Petitioner does not even venture to suggest it is not,[77] there is obviously no merit whatever

---

75. *American Power & Light Co. v. SEC*, 329 U. S. 90, 123.

76. It is to be noted that, to our knowledge, the Commission has never even claimed it has the right to pass on the compensation which holding companies pay counsel for representing them in proceedings under Section 11(b) of the Act.

77. Petition, p. 18, note 10:

> "We do not argue that the company's agreement to pay Masterson $150 a day rather than $100 a day which the Commission found his services to be worth was so improvident as to amount to waste, since the Commission made no such finding.

to Petitioner's argument that giving effect to this agreement would "frustrate" the Congressional intention. Indeed, if the foregoing standard *asserted by the Commission* is correct, to the effect that Congress intended that the management's "discretion in the exercise of its responsibilities should be recognized" subject only to check against abuse, it might be contended that it is essential that such an agreement be given effect in order to comply with the Congressional intent.

B. The Decision Affirmed Below Properly Applied the Substantial Evidence Rule.

In the light of the factors discussed above and others discussed in its Opinions, the Enforcement Court concluded that the evidence fully established the fairness and reasonableness of the attorney-client agreement for Respondent's compensation, and furnished no substantial support for the Commission's nullification of that agreement or for its purported allowance to Respondent of "compensation" which did not even suffice to cover his office overhead charges.[78] We are confident that any judicial tribunal would inevitably reach the same conclusion if it canvassed "the record as a whole", as Judge Leahy did and was required to

---

Nor do we argue that an award of the larger amount ordered by the district court would be an abuse of discretion if the district court were authorized by the statute to approve fees as such, rather than to exercise judicial review over the approval action of the Commission."

78. Even Appellant has not ventured to question the correctness of this finding. Assuming that an attorney's annual productive work-year comprises 250 days, on the basis of 5 days per week for 50 weeks (which many attorneys would regard as excessive), the $35,000-$40,000 annual overhead would be equivalent to from $140-$150 per day. To be sure while Masterson was engaged in rendering his services to Light & Power his assistants were presumably also engaged in productive activity, but as in any law office the chief burden of meeting the overhead charges must necessarily be carried by those cases to which the senior partners are required to devote themselves personally.

do.[79] We would welcome the Court's undertaking that task if it wishes in connection with the present Petition, but under the standards of appellate review laid down by this Court in connection with its decisions under the Administrative Procedure Act, we doubt that the Court will wish to perform that task (already performed by two Courts) or to attempt to re-assess the evidence *de novo*.

In discussing the respective judicial roles which Congress intended to entrust on the one hand to the enforcement court in reviewing the determinations of an administrative agency, and on the other hand to the appellate court which reviews the conclusion of the enforcement court, this Court stated:

> "Whether on the record as a whole there is substantial evidence to support agency findings is a question which Congress has placed in the keeping of the Court of Appeals. This Court will intervene only in what ought to be the rare instance when the standard appears to have been misapprehended or grossly misapplied." (*Universal Camera Co. v. Labor Board*, 340 U. S. at p. 491.)

In a companion decision issued simultaneously, the Court elaborated on the foregoing by stating:

> "Were we called upon to pass on the Board's conclusions in the first instance or to make an independent review of the review by the Court of Appeals, we might well support the Board's conclusion and reject that of the court below. But Congress has charged the Courts of Appeals and not this Court with the normal and primary responsibility for granting or denying enforcement of Labor Board orders." (*Labor Board v. Pittsburgh Steamship Co.*, 340 U. S. 498, 502.)

And more recently still this Court once again reemphasized this principle, stating:

---

79. *Universal Camera Co. v. Labor Board, supra*, note 67.

> "Last term we made it plain that Congress charged the Courts of Appeal, not this Court, with the normal and primary responsibility for reviewing the conclusions of the Board. We stated that this Court 'is not the place to review a conflict of evidence nor to reverse a Court of Appeals, because were we in its place we would find the record tilting one way rather than the other, though fair-minded judges could find it tilting either way.' *Labor Board v. Pittsburgh S. S. Co.* . . . We repeat and reaffirm this rule, noting its special applicability to cases where, as here, a statutory standard such as 'good faith' can have meaning only in its application to the particular facts of a particular case." (*Labor Board v. American Ins. Co.*, 343 U. S. 395, 409-410.)

In the instant case the District Court has been entrusted by Congress with the role of enforcement court analogous to that which the Court of Appeals occupied in the cases from which the foregoing quotations are taken. Even with due regard for the differences between the relationships of the Courts at each of the levels in the hierarchy, we think the principle of appellate review enunciated by this Court makes it clear that the determination of the District Court in this case should not be disturbed, unless this Court finds (that which the Court of Appeals concluded was not the case) that the enforcement court's decision has "misapprehended or grossly misapplied" the standard of "substantiality of the evidence on the record as a whole". As this Court recently emphasized, this principle has particular force in a situation such as this, where, assuming supervisory authority does exist, the question whether the attorney-client arrangement violated the statutory standard that an 11(e) plan be "fair and equitable", can only be determined "in its application to the particular facts of a particular case".

Moreover, we suggest that the principle discussed above takes on even further force in this case where the determination has been made by an enforcement court possessed not only of long and intimate familiarity with the particular proceedings, but which is also widely recognized as the most expert enforcement court in the country in relation to the particular statute under which the proceedings arose;[80] and its determination was thereafter reviewed and affirmed by the appellate court which the Commission itself has referred to as "the court of appeals most experienced in Holding Company Act problems".[81]

Respectfully submitted,

E. Ennalls Berl,
948 Delaware Trust Building,
Wilmington, Delaware,
Attorney for Respondent.

Dated: August 19, 1953.

---

80. See Note, 59 Yale Law Journal 1365 (at p. 1369):
"The outstanding example of an expert district judge is Judge Leahy of Delaware, who has reviewed 42% of all 11(e) plans submitted for district court approval. * * * And his decisions on acceptability of plans have been highly respected by both appellate courts and the S. E. C."

81. SEC. Brief filed in the U. S. District Court for the Southern District of New York in the proceeding reported in *Re Electric Bond and Share Company*, 95 F. Supp. 492.